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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/913,695

08/02/2002

Niels Rump

SCHO0113

3855

22862 7590 04/17/2009

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EXAMINER

HENNING, MATTHEW T

ART UNIT

PAPER NUMBER

2431

MAIL DATE

DELIVERY MODE

04/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/913,695	Applicant(s) RUMP ET AL.	
	Examiner MATTHEW T. HENNING	Art Unit 2431	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This action is in response to the communication filed on 1/12/2009.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see the pre-appeal brief request, filed 1/12/2009, with respect to the rejection(s) of claim(s) 1-17 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Saito and Peterson, Jr. (US Patent Number 5,825,876).

Also note the new grounds of rejections below on the ground of nonstatutory obviousness-type double patenting.

All objections and rejections not set forth below have been withdrawn.

Claims 1-17 have been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito (US Patent Number 6,744,894), and further in view of Peterson, Jr. (US Patent Number 5,825,876) hereinafter referred to as Peterson.

1 Regarding claims 1 and 12, Saito disclosed a method for generating an encrypted user
2 data stream, which has a header and a user data block (See Saito Fig. 4G), comprising the
3 following steps: generating the header (See Saito Col. 8 Paragraph 8); and generating the user
4 data block which follows the header by means of the following substeps: using a first part of the
5 user as an unencrypted start section for the user data block, the start section remaining
6 unencrypted (See Saito Fig. 4G and Col. 8 Paragraphs 6-10); encrypting a second part of user
7 data to be encrypted which follow the first part of the user data to obtain encrypted data (See
8 Saito Fig. 4G); and appending the encrypted user data to the unencrypted start section (See Saito
9 Fig. 4G), but Saito failed to disclose using the first part of the user data as the unencrypted start
10 section, or that the unencrypted start section is placed immediately after the header.

11 Peterson teaches providing non-secured content data along with the secured content data,
12 the non-secured content data constituting a free sampling of the secured data, as it may be readily
13 accessed, without authorization, by a potential consumer and is provided as a means for enticing
14 the consumer to pay for access to the secured data content (See Peterson Col. 5 Lines 30-39).
15 Peterson further teaches that the non-secure data is the first part of the content data and that it
16 immediately follows the header data (See Peterson Fig. 3).

17 It would have been obvious to the ordinary person skilled in the art at the time of
18 invention to have employed the teachings of Peterson in the content system of Saito by providing
19 non-secured sampling data immediately following the header data and before the secured data.
20 This would have been obvious because the ordinary person skilled in the art would have been
21 motivated to provide a means for enticing the consumer to pay for access to the secured content.

1 Regarding claims 6 and 7, Saito and Peterson disclosed a method for playing back an
2 encrypted user data stream, which has a header and a user data block, where an unencrypted start
3 section of the user data block, which is placed immediately after the header, comprises the first
4 part of the user data in an unencrypted form, and where a further section of the user data block
5 comprises a second part of the user data in an encrypted form, where the header comprises
6 information which is absolutely necessary for playing back the unencrypted start section of the
7 user data block and where the header also comprises information which is not needed to play
8 back the unencrypted start section of the user data block (See Saito Fig. 4G and Col. 8),
9 comprising: initially processing only the information of the header which is absolutely necessary
10 for playing back the unencrypted start section of the user data block (See Saito Col. 8 Paragraph
11 2 and Peterson Col. 7 Line 56 – Col. 8 Line 12), processing the information of the header which
12 is not needed to play back the unencrypted start section (See Saito Col. 8 Paragraphs 2-10);
13 decrypting the further section of the user data block using the information of the header which is
14 processed in the step of processing (See Saito Col. 8 Paragraphs 2-10); but failed to disclose
15 specifically playing back the data. However, it is implied that the data was meant to be played
16 back since Saito disclosed that the data was video data (See Saito Col. 8 Paragraph 2).

17 Regarding claims 13-14, Saito and Peterson disclosed a method for playing back an
18 encrypted multimedia data stream, which has a header and a user data block, where an
19 unencrypted start section of the user data block, which is placed immediately after the header,
20 comprises the first part of the user data in an unencrypted form and where a further section of the
21 user data block comprises a second part of the user data in an encrypted form, where the header
22 comprises information which is absolutely necessary for playing back the unencrypted start

1 section of the user data block and where the header also comprises information which is not
2 needed to play back the unencrypted start section of the user data block (See Saito Fig. 4G and
3 Col. 8), comprising the following steps: initially processing the information of the header which
4 is absolutely necessary for playing back the unencrypted start section of the user data block (See
5 Saito Col. 8 Paragraph 2), processing the information of the header which is not needed to play
6 back the unencrypted start section (See Saito Col. 8 Paragraph 2 and Peterson Col. 7 Line 56 –
7 Col. 8 Line 12); and decrypting the further section of the user data block using the information of
8 the header which is processed by the unit for processing (See Saito Col. 8 Paragraphs 2-10); but
9 failed to disclose specifically playing back the data. However, it is implied that the data was
10 meant to be played back since Saito disclosed that the data was video data (See Saito Col. 8
11 Paragraph 2), and it was further obvious that playback would have been in response to
12 processing the header data (used to allow the content to be recognized, as seen in Saito Col. 8).
13 Saito further did not specifically disclose a unit which only processes the header. However, it
14 was well known in the art that modularization of a system improved the flexibility and
15 comprehensibility of the system, and as such it would have been obvious to have broken the
16 system in to different modules, and as header processors were also well know in the art it would
17 have been obvious to have used a dedicated header processor in the system of Saito.

18
19 Regarding claim 3, Saito and Peterson disclosed that the second part does not comprise
20 all the user data to be encrypted and wherein the step of generating the user data block includes
21 the following substep: appending a third part of user data to be encrypted, which follow the

1 second part, to the encrypted user data of the second part, the user data of the third part being
2 unencrypted (See Saito Fig. 4G and Col. 8).

3 Regarding claims 2, and 4-5, Saito and Peterson disclosed generating the header (See the
4 rejection of claim 1 above) but failed to specifically disclose entering the length of the
5 unencrypted start section in the header. However, Saito did disclose that the header data needed
6 to contain information that would allow the content to be recognized. Furthermore, it was well
7 known at the time of invention that header data included the various lengths of portions of the
8 data associated with the header. Also, it was well known to include a total length for the content
9 in the header. Therefore, it would have been obvious to the ordinary person skilled in the art at
10 the time of invention to employ what was known in the art at the time of invention by adding the
11 lengths of the various portions of the content in Fig. 4G to the header and the total length. This
12 would have been obvious because the ordinary person skilled in the art would have been
13 motivated to allow the content to be recognized.

14 Regarding claim 10, Saito and Peterson disclosed that the data was encoded (See Saito
15 Col. 2 Paragraph 2) and it therefore would have been obvious that the type of coding was
16 indicated in the header data in order to recognize the data.

17 Regarding claims 11, and 17, Saito and Peterson disclosed the data as audio or video data
18 (See Saito Col. 8 Paragraph 2).

19 Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito and
20 Peterson as applied to claims 7 and 14 above, and further in view of Downs et al. (US Patent
21 Number 6,226,618).

1 Saito and Peterson disclosed the different portions of header data (See the rejection of
2 claim 6 above), but failed to disclose concurrent processing of the encrypted data while playing
3 back the unencrypted data.

4 Downs teaches that concurrently decrypting the data while playing unencrypted data
5 makes the decryption more efficient since the entire file does not need to be decrypted prior to
6 beginning playback (See Downs Col. 82 Paragraph 5).

7 It would have been obvious to the ordinary person skilled in the art at the time of
8 invention to employ the teachings of Downs in the decryption system of Saito and Peterson by
9 concurrently playing and decrypting. This would have been obvious because the ordinary person
10 skilled in the art would have been motivated to increase the efficiency of the decryption system.

11 Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito and
12 Peterson as applied to claims 6 and 13 above, and further in view of Rump et al. (DE 196 25 635
13 C1).

14 While Saito and Peterson generically taught having unencrypted sample data, Saito and
15 Peterson did not teach a length for the sample data, specifically that the length of the
16 unencrypted start section of the user data block is between 1 and 60 seconds.

17 Rump, on the other hand, teaches specifically that the first 20 seconds of an audio track
18 can be used as sample data (Rump Col. 2 Last Paragraph to Col. 3 First paragraph).

19 It would have been obvious to the ordinary person skilled in the art at the time of
20 invention to have employed the teachings of Rump in the content system of Saito and Peterson
21 by having the sample data be the first 20 seconds of an audio track. This would have been

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obvious because the ordinary person skilled in the art would have been motivated to provide a specific sample size to the generic sample data of Saito and Peterson.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4, 6, 7, 9-14, 16, and 17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, 16, 17, 28, and 29 of U.S. Patent No. 7,434,052 in view of Peterson, Jr. (US Patent Number 5,825,876).

Instant Application Claim Number 1:	Patent Number 7,434,052
A method for generating an encrypted user data stream, which has a header and a user data block, comprising: generating the header; and	Method for producing a payload data stream comprising a header and a payload data block containing encrypted payload data, comprising

<p>generating the user data block, which follows the header, by means of the following substeps:</p> <p>using the first part of the user data as an unencrypted start section for the user data block, the unencrypted start section remaining unencrypted;</p> <p>encrypting a second part of user data which follows the first part of the user data to obtain encrypted user data;</p>	<p>the following steps:</p> <p>generating a payload data key for a payload data encryption algorithm for encrypting payload data, the payload data having a first section and a second section, the first section and the second section including audio data, video data, a combination of audio data and video data, or binary data forming an executable program;</p> <p>wherein the second section of the payload data remains unencrypted;</p> <p>encrypting the audio data, video data, a combination of audio data and video data, or binary data forming an executable program of the first section of the payload data using said payload data key and said payload data encryption algorithm to obtain an encrypted</p>
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<p>and appending the encrypted user data to the unencrypted start section,</p> <p>wherein the unencrypted start section of the user data is placed immediately after the header.</p>	<p>section of said payload data block of said payload data stream,</p> <p>processing the audio data, video data, a combination of audio data and video data, or binary data forming an executable program of the unencrypted second section of said payload data to deduce information characterizing the unencrypted second section of said payload data; linking said information and said payload data key by means of an invertible logic linkage to obtain a basic value; encrypting said basic value using a key of two keys being different from each other by an asymmetrical encryption method, said two different keys being the public and the private keys respectively for said asymmetrical encryption method, to obtain an output value being an encrypted version of said payload data key; and entering said output value into said header of said payload data stream.</p>
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1 Regarding claims 1 and 12, the 7,434,052 patent does not specifically claim appending
2 the encrypted user data to the unencrypted start section wherein the unencrypted start section of
3 the user data is placed immediately after the header.

4 Peterson teaches providing non-secured content data along with the secured content data,
5 the non-secured content data constituting a free sampling of the secured data, as it may be readily
6 accessed, without authorization, by a potential consumer and is provided as a means for enticing
7 the consumer to pay for access to the secured data content (See Peterson Col. 5 Lines 30-39).
8 Peterson further teaches that the non-secure data is the first part of the content data and that it
9 immediately follows the header data (See Peterson Fig. 3).

10 It would have been obvious to the ordinary person skilled in the art at the time of
11 invention to have employed the teachings of Peterson in the content system of the 7,434,052
12 patent by providing non-secured sampling data immediately following the header data and before
13 the secured data. This would have been obvious because the ordinary person skilled in the art
14 would have been motivated to provide a means for enticing the consumer to pay for access to the
15 secured content.

16 Regarding claims 6, 7, 13, and 14, claims 17 and 29 of the 7,434,052 patent render
17 obvious the claim limitations in view of Peterson as discussed above. Note that Peterson renders
18 obvious initially processing only the information of the header which is absolutely necessary for
19 playing back the unencrypted start section of the user data block, and playing back the
20 unencrypted start section of the user data block (Peterson Col. 7 Line 56 – Col. 8 Line 12).

21 Regarding claims 2, and 4 the 7,434,052 patent disclosed generating the header (See the
22 rejection of claim 1 above) but failed to specifically disclose entering the length of the

1 unencrypted start section in the header. Furthermore, it was well known at the time of invention
2 that header data included the various lengths of portions of the data associated with the header.
3 Also, it was well known to include a total length for the content in the header. Therefore, it
4 would have been obvious to the ordinary person skilled in the art at the time of invention to
5 employ what was known in the art at the time of invention by adding the lengths of the various
6 portions of the content and the total length. This would have been obvious because the ordinary
7 person skilled in the art would have been motivated to allow the content to be recognized.

8 Regarding claim 3, while the 7,434,052 patent did not claim specifically appending a
9 third part of user data to the second part, the user data of the third part being unencrypted,

10 Regarding claim 9, while the 7,434,052 patent did not claim that the unencrypted section
11 was between 1-60 seconds, this is simply a matter of design choice, and would have been
12 obvious to the ordinary person skilled in the art at the time of invention.

13 Regarding claim 10, see claims 7 and 16 of the 7,434,052 Patent.

14 Regarding claims 11 and 17, see claims 1, 17, 28, and 29 of the 7,434,052 patent.

15 Regarding claim 16, see claim 30 of the 7,434,052 patent.

16 Claims 3, and 5 are rejected on the ground of nonstatutory obviousness-type double
17 patenting as being unpatentable over claims 1, 17, 28, and 29 of U.S. Patent No. 7,434,052 in
18 view of Peterson, Jr. (US Patent Number 5,825,876), and further in view of Saito.

19 While the 7,434,052 patent and Peterson claimed appending an unencrypted content
20 portion with an encrypted content portion, they did not claim appending a third section which is
21 also unencrypted. However, Saito clearly teaches doing just this in Fig. 4G and Col. 8. It would
22 have been obvious to the ordinary person skilled in the art to have appended a third unencrypted

1 section to the encrypted section of the content system. This would have been obvious because
2 the ordinary person skilled in the art would have been motivated to increase the processing
3 efficiency of the system.

4 Claims 8, and 15 are rejected on the ground of nonstatutory obviousness-type double
5 patenting as being unpatentable over claims 1, 17, 28, and 29 of U.S. Patent No. 7,434,052 in
6 view of Peterson, Jr. (US Patent Number 5,825,876), and further in view of Downs et al. (US
7 Patent Number 6,226,618).

8 The 7,434,052 patent and Peterson claimed the different portions of header data (See the
9 rejection of claim 6 above), but failed to disclose concurrent processing of the encrypted data
10 while playing back the unencrypted data.

11 Downs teaches that concurrently decrypting the data while playing unencrypted data
12 makes the decryption more efficient since the entire file does not need to be decrypted prior to
13 beginning playback (See Downs Col. 82 Paragraph 5).

14 It would have been obvious to the ordinary person skilled in the art at the time of
15 invention to employ the teachings of Downs in the decryption system of the 7,434,052 patent and
16 Peterson by concurrently playing and decrypting. This would have been obvious because the
17 ordinary person skilled in the art would have been motivated to increase the efficiency of the
18 decryption system.

19 ***Conclusion***

20 Claims 1-17 have been rejected.

21 The prior art made of record and not relied upon is considered pertinent to applicant's
22 disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW T. HENNING whose telephone number is (571)272-3790. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew T Henning/
Examiner, Art Unit 2431